



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

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March 9, 1992

Mr. Frank Carr
Administrator, Board of Control
4 E Herschler Building
Cheyenne, WY 82002

Dear Frank:

Re: Burnt Fork/Birch Creek, Beaver Crk.

Bob Leake and I have had the opportunity to review the draft memo which you gave us regarding our discussions in Rock Springs on the 27th of January. I am sorry it has taken me so long to get back to you with our comments but this is turning out to be a very busy year for us in distribution. Although, your draft generally accurately describes our meeting although, I believe there are several changes should be made.

Towards the bottom of page one: You state "under Utah law the maximum amount of water that can be applied to any one acre is 3 acre-feet". This should be changed to read "under Utah law the maximum amount of water that can be applied to any one acre in the Burnt Fork and Beaver Creek area is 3 acre-feet as measured at the farm field headgate."

On page two in the middle of the page: The example needs to be modified somewhat. I have re-stated it as follows: "An example of this is the company may have 1700 acre-feet of reservoir water which they use to supplement the irrigation of their farm land. The company's service area encompasses a total of 2500 acres and the company has a right to irrigate 2,000 acres within the service area during any given irrigation season. The reservoir water could be used to supplement the irrigation of any of the farm land in any amount as long as the total irrigation water applied from all sources does not exceed 3 acre-feet per acre as measured at the farm field headgate."

On page three: It needs to be clarified that in Utah you need to contact the Division of Wildlife Resources only if you intend to kill beaver. A stream alteration permit is only required from the Utah State Engineer if you will be disturbing the creek channel while removing beaver dams. However, it probably would be a good policy to check with the State Engineer's Office in each situation to determine if a permit is needed or not. At the bottom of the paragraph the sentence should read: it should be noted that in Utah it is not necessary to obtain a 404 permit from the Army Corps of Engineers because of the general permit 040 issued to the State by the Corps, ...

On page four: I am uncertain how Wyoming's abandonment procedure works. In Utah, a perfected water right is considered abandoned if the water user submits a written statement to the fact that he has no further interest in the water or if he takes some action such as destroying his diverting works or filling in his ditch etc. with the intent to stop using water. A perfected water right is considered to be forfeited if it is not used for a period of five years (non-use during periods of time when the water is not physically available such as during a drought is not considered as forfeiture). Determination and enforcement of forfeiture can result from a court decree in a lawsuit between water users; or during an adjudication proceeding when the state engineer disallows a water right on the basis of non-use and the proposed determination is then decreed by the court; or when an application for an extension of time within which to resume use is denied by the state engineer.

At the bottom of page four: We believe the sentence should read "A change cannot be made that would injure another appropriator either up stream or down stream. However, in Utah priority can be subordinated".

On page five in the middle of the page: The tag we are currently using spells out only the penalty for tampering with a headgate once regulated.

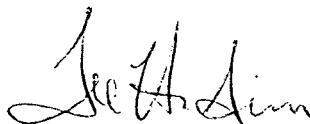
I have a question about your statement at the bottom of page five and the top of page six. As I recall the meeting, it was Wyoming's intention to allow the Utah users to maintain their current level of assessment even though this would not generate 30% of the salary and budget proposed for the commissioner by Wyoming. If your thoughts have changed on this we probably should discuss it. As we indicated before, a written agreement between Utah and Wyoming concerning this and other issues will be needed so that we can maintain a common understanding of the distribution operation in the area.

Page seven, the last paragraph: Our intention in writing to Lyman Grazing is to inform them that they must either specify points of diversion with headgates and measuring devices (and file appropriate applications for change in point of diversion if needed) or they can rely on the beaver dams to spread the water out naturally. If they choose the latter, they must remove any artificial diversions in the stream. We don't have the authority to require them to remove the beaver dams from the stream.

Burnt Fork/Birch Creek and Beaver Creek
Continued -page 3-

If you have any questions concerning the changes I have proposed in your memorandum, please contact me at 538-7380.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lee H. Sim".

Lee H. Sim, P. E.
Directing Engineer for
Adjudication/Distribution

LHS:bd

cc: Bob Leake, Vernal Regional Engineer